

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
ABDULLAH SPENCER EL DEY,
:

Plaintiff,
:

-v-
:

CYNTHIA BRANN, et al.,
:

Defendants.
:
-----X

20-CV-7208 (JMF)

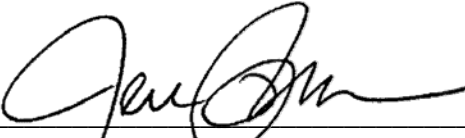
ORDER

JESSE M. FURMAN, United States District Judge:

The Court has received a letter from Plaintiff, attached as Exhibit A (with personal identifying information redacted), dated September 30, 2021 and received by the Court on October 27, 2021, submitting his signed medical release. The Court will provide unredacted copies of the same to Defendants. The Clerk of Court is directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: October 28, 2021
New York, New York



JESSE M. FURMAN
United States District Judge

9/30/2021

To: Honorable Jesse M. Furman;

good day sir,

it seems there keeps arising these complications with this case being exploited to get out of giving me due justice. Yes, i am not a lawyer, so You'll have to bear with me. Mr. Khairy points out things that can be remedied.

I am sending You a copy of my transacting resubmitted HIPAA form because it is clear Mr. Khairy seeks to get the case dismissed for all types of faulty reasons, which infact is all understandable. But my complaint is true.

Good day sir.

T.D.C.
A. Spencer-EL-DEY



GEORGIA M. PESTANA
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MOSTAFA KHAIRY
Assistant Corporation Counsel
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September 23, 2021

BY ECF

Honorable Jesse M. Furman
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: Abdullah Spencer El Dey v. Cynthia Brann, et al.,
20-CV-7208 (JMF)

Your Honor:

I am the attorney in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York, representing the defendants in the above-referenced matter. Defendants write in response to plaintiff's opposition to their July 13, 2021 motion to dismiss for failure to prosecute. See Civil Docket Sheet, Entry Nos. 27, 34. For the reasons set forth herein, defendants' motion should be granted in its entirety and plaintiff's case should be dismissed for failure to prosecute.

I. Relevant Background

By way of background, plaintiff Abdullah Spencer El Dey, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983 alleging that several members of the New York City Department of Correction ("DOC") failed to protect him while he was incarcerated at the North Infirmity Command ("NIC") at Rikers Island. See Compl. generally. On July 13, 2021, defendants moved to dismiss this case for failure to prosecute pursuant to Rules 37 and 41(b) of the Federal Rules of Civil Procedure ("FRCP") on the grounds that plaintiff: (1) failed to provide defendants with executed HIPAA releases in violation of several Court orders to do so; and (2) failed to respond to any of defendants' discovery requests including interrogatories and requests

for the production of documents.¹ See Civil Docket Sheet, Entry Nos. 26, 27, 28. On July 14, 2021, the Court ordered plaintiff to respond to defendants' motion by no later than August 16, 2021, and any reply by the defendants to be filed by August 16, 2021. *Id.* at Entry No. 29. However, plaintiff failed to submit an opposition to defendants' motion by August 16, 2021. *Id.* at Entry No. 30. Accordingly, on August 20, 2021, defendants requested that the Court deem their July 13, 2021 motion unopposed and fully briefed. *Id.* On August 23, 2021, the Court denied defendants' request and *sua sponte* extended plaintiff's time to oppose defendants' motion until September 16, 2021. *Id.* at Entry No. 32.

On September 7, 2021, plaintiff submitted a one page purported opposition ("Pl. Opp.") to defendants' motion to dismiss. *Id.* at Entry No. 34. Attached to Pl. Opp. is a medical release directed to the Office of the Corporation Counsel. The release purports to authorize the release of his records by NYC Health + Hospitals ("HHC"). See Pl. Opp. at pp. 10-11. However, plaintiff did not sign the release and the name printed on the signature line does not match other documents previously submitted by plaintiff to HHC. Moreover, following plaintiff's name appears to be the abbreviation "T.D.C.," which, upon information and belief, is an acronym sovereign citizens use for "under threat, duress, and/or coercion."

II. Argument

As an initial matter, plaintiff did not comply with the Court's orders to provide defendants with an executed HIPAA release for his medical records. After receiving Pl. Opp., the undersigned promptly submitted the release to HHC in order to obtain plaintiff's medical records. However, on September 21, 2021, the undersigned was informed by counsel for HHC that, upon review of the release provided by plaintiff, they were unable to verify plaintiff's signature on the release. See Ex. A, e-mail from HHC dated September 21, 2021. Indeed, according to HHC, they compared the release from Pl. Opp. to signatures contained on other documents in plaintiff's file, and they do not match. See Ex. A. As such, HHC is unable to release the medical records to defense counsel.

Moreover, even if the release had been properly signed, which it is not, plaintiff has still failed to comply with the Court's orders because he put "T.D.C." next to his signature, rendering the HIPAA release invalid and unusable by this Office. See Pl. Opp. at pp. 10-11. The undersigned is informed from previous communications with plaintiff, in both this lawsuit and an unrelated action against DOC, that he is a sovereign citizen.² Upon information and belief, sovereign citizens sign a document "T.D.C." to represent that they are signing the

¹ Pursuant to the Court's April 22, 2021 scheduling order, all fact discovery must be completed by August 23, 2021. See Civil Docket Sheet, Entry No. 24. Obviously, plaintiff's failure to comply with his discovery obligations has prevented defendants from complying with the Court's discovery deadline. As such, defendants respectfully reserve their right to request an extension of the discovery deadline in the event the instant motion is denied.

² See Abdullah Spencer v. Department of Corrections, et al., No. 19-CV-6688 (AMD) (LB) (E.D.N.Y.), Civil Docket Sheet, Entry No. 1.

document under “threat, duress, and/or coercion.” See Ex. B at p. 4.³ Thus, even assuming this is plaintiff’s signature on the release, he is not voluntarily releasing his medical records to defense counsel, and therefore defendants’ cannot obtain his medical records. Similarly, HHC would not lawfully be allowed to release the medical records to this Office given plaintiff’s representation that he is doing so involuntarily. Therefore, the release provided by plaintiff is unusable by this Office and plaintiff has *again* failed to comply with the Court’s orders to provide defendants with an executed HIPAA release.

III. Conclusion

Plaintiff’s refusal to comply with several court orders, and now, his renewed dilatory tactics have effectively stalled this lawsuit since December 2020, when defense counsel first requested plaintiff execute a release for his medical records, *nearly ten (10) months ago*. See Civil Docket Sheet, Entry No. 16.

Accordingly, for the reasons set forth herein, and in defendants’ July 13, 2021 moving papers, defendants respectfully request the Court grant their motion and dismiss this action in its entirety for failure to prosecute, pursuant to FRCP 37 and 41(b). Thank you for your consideration herein.

Respectfully submitted,

Mostafa Khairy /s/
Mostafa Khairy
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **BY U.S. MAIL**
Adbullah Spencer El Dey #3491605137
North Infirmary Command
15-00 Hazen Street
East Elmhurst, NY 11370

³ An electronic copy of the Anti-Defamation League’s guide entitled “The Sovereign Citizen Movement, Common Documentary Identifiers & Examples” may be found at <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Sovereign-Citizen-Documentary-Identifiers.pdf>. However, for the Court’s convenience, a PDF version is appended to defendants’ letter as Ex. B.



nyc.gov/hhc

Patsy Yang, DrPH
Senior Vice President
Correctional Health Services

Correctional Health Services
Medical Records Unit
55 Water Street, 18th Floor
New York, NY 10041

Request for Release of Medical Information

I request a copy of my entire medical record: (Please Print)

Name: SPENCER-EL-DEY Abdallah
Last First (Middle Initial)

AKA: _____

Book & Case Number: [REDACTED]

NYSID Number: [REDACTED]

Date of Birth: [REDACTED]

Housing Facility: NIC

If you would like for your medical record to be sent to any other parties, please fill out a HIPAA release form (Authorization form).

Please be advised that you can only request your medical records every 6 months.

Patient Signature: A. Spencer-EL-DEY

Date: 9 / 30 / 2021
Month Day Year



AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name Abdullah SPENCER-EL-DEY	
Patient Address 1500 Hazen St, East Elmhurst, N.Y. 11370	

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information: Health and Hospitals (Rikers)	
8. Name and address of person(s) or category of person to whom this information will be sent: Mostafa Khairy City of N.Y. Law Department 100 Church Street	
9(a). Specific information to be released: Rm 3-208 New York, N.Y. 10007	
<input checked="" type="checkbox"/> Medical Record from (insert date) 2019 to (insert date) 4/1/2021 <input type="checkbox"/> Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers. <input type="checkbox"/> Other: _____ Include: (Indicate by Initialing) <div style="text-align: right;"> <input type="checkbox"/> Alcohol/Drug Treatment <input checked="" type="checkbox"/> Mental Health Information <input type="checkbox"/> HIV-Related Information </div>	
Authorization to Discuss Health Information (b) <input checked="" type="checkbox"/> By initialing here A/S-E-D authorize NIC <div style="display: flex; justify-content: space-between;"> Initials Name of individual health care provider </div> to discuss my health information with my attorney, or a governmental agency, listed here: Mostafa Khairy City of N.Y. Law Department 100 Church St Rm 3-208 (Attorney/Firm Name or Governmental Agency Name) N.Y., N.Y. 10007	
10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: abovementioned firm	11. Date or event on which this authorization will expire: After suit ends
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Abdullah Spencer-El-Dey
Signature of patient or representative authorized by law.

Date: **9-30-2021**

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

To Mr. Mostafa Khairy,

I must apologize for the mistake i made with the signature on the medical release forms, it never was my intention. Nevertheless here i enclose a copy of the proper filled out form filed with the HHC.

Thank You for Your Patience in this matter.

A. Spencer-EL-DEY

Abdullah Spencer-EL-DEY
3491605137 N.I.C.
1500 Hazen St
East Elmhurst, N.Y.

NEW YORK NY 100

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Honorable Jesse M. Furman
U.S.D.C. Judge
Southern District of N.Y.
40 Foley Square
N.Y., N.Y. 10007

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